



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

March 16, 2010

Marc O'Hara

REDACTED

RE: Warning Letter

FPPC Case No. 05/166: The People for Larry Russell, Ph.D., and Marc O'Hara

Dear Mr. O'Hara:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act") found in Government Code Section 81000, and following. As you may be aware, in response to a complaint filed with the Enforcement Division of the Commission, the Commission has been investigating whether you and The People for Larry Russell, Ph.D. Committee ("Committee") violated the Act by failing to properly report contributions.

The Commission has completed its investigation into this case. Our investigation has revealed that during the 2004 campaign, you, as a campaign consultant of the Committee, coordinated the production of a mailer by a general purpose committee, California Alliance for Renewable Energy Sources, which advocated the defeat of Mr. Russell's opponent. This coordination necessitated the cost of the mailer be reported as a contribution to the Committee.

The Act requires that all contributions received and expenditures made be reported on the appropriate campaign statement. (Section 84211.) Section 82015, subdivision (b)(1) defines a contribution as a payment that is made at the behest of a committee unless full and adequate consideration is received from the committee for making the payment. An independent expenditure, as defined by Section 82031, is an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate which is not made to or at the behest of the affected candidate or committee.

In addition, Section 83116.5 of the Act extends liability for violations of its provisions to any person "who purposely or negligently causes any other person to violate any provision of this title, or who aids and abets any other person in the violation..." Through your actions, you purposely or negligently caused another to violate the reporting provisions of the Act while you and your company, Hired Gun Media, received compensation for services provided to the Committee. (See Sections 83116.5 and 84211.) You did this by coordinating with CARES to

send a mailer which advocated the defeat of Mr. Russell's opponent. Coordination with committees or other organizations for expenditures results in contributions to the candidate and committee you are consulting for, thus causing you and them to be in violation of the Act if not properly reported. However, after a review of the facts and evidence produced by the investigation, and because the age of these violations precludes commencing with prosecution, the Commission has decided to close this case with this warning letter.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly-discovered information or future conduct. Failure to comply with the provisions of the Act in the future could result in monetary penalties up to \$5,000 per violation.

A warning letter is a Commission resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the Commission will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter.

If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

REDACTED

Galena West
Senior Commission Counsel
Enforcement Division